

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Diana Vale	Team: Squad #6	CCRB Case #: 201802054	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 01/18/2018 11:58 AM	Location of Incident: § 87(2)(b)	Precinct: 115	18 Mo. SOL 7/18/2019	EO SOL 7/18/2019	
Date/Time CV Reported Thu, 03/15/2018 3:29 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 03/15/2018 3:29 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Jason Vargas	20765	963307	115 PCT
2. POM Joseph Nicastro	18277	961976	115 PCT
3. POM Kurt Liebe	02733	960808	115 PCT
4. POM Fouger Rene	19584	962722	115 PCT
5. Officers			115 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Joseph Nicastro	Abuse: Police Officer Joseph Nicastro entered § 87(2)(b) § 87(2)(b) in Queens.	§ 87(2)(b)
B.POM Joseph Nicastro	Force: Police Officer Joseph Nicastro used physical force against § 87(2)(b)	§ 87(2)(b)
C. Officers	Abuse: Officers forcibly removed § 87(2)(b) to the hospital.	§ 87(2)(b)
D.POM Joseph Nicastro	Abuse: Police Officer Joseph Nicastro refused to provide his name to § 87(2)(b)	§ 87(2)(b)
E.POM Jason Vargas	Abuse: Police Officer Jason Vargas refused to provide his name to § 87(2)(b)	§ 87(2)(b)
F.POM Kurt Liebe	Abuse: Police Officer Kurt Liebe refused to provide his name to § 87(2)(b)	§ 87(2)(b)
G.POM Fouger Rene	Abuse: Police Officer Fouger Rene refused to provide his name to § 87(2)(b)	§ 87(2)(b)

Case Summary

On March 15, 2018, § 87(2)(b) filed this complaint with the Civilian Complaint Review Board via telephone.

On January 18, 2018, at approximately 11:58 a.m., PO Joseph Nicastro and PO Jason Vargas from the 115th Precinct arrived to the location of § 87(2)(b) in Queens, in response to a 911 call for an emotionally disturbed person. PO Nicastro entered § 87(2)(b) bedroom located on the § 87(2)(b) (**Allegation A: Abuse of Authority, § 87(2)(g)**) and pushed her onto her bed (**Allegation B: Force, § 87(2)(g)**).

At this time, PO Kurt Liebe and Fouger Rene of the 115th Precinct responded to the location. An FDNY EMS unit arrived to the location and attempted to speak with § 87(2)(b). EMS determined that § 87(2)(b) should go to the hospital and all four officers on scene assisted in the transport of § 87(2)(b) to the hospital (**Allegation C: Abuse of Authority, § 87(2)(g)**). § 87(2)(b) requested that PO Nicastro, PO Vargas, PO Liebe, and PO Rene provide their names to her which she did not receive (**Allegation D – G: Abuse of Authority, § 87(2)(g)**). § 87(2)(b) was transported to § 87(2)(b) and was not arrested or issued a summons for this incident.

There was no video footage obtained for this incident.

Findings and Recommendations

Allegation A – Abuse of Authority: Police Officer Joseph Nicastro entered § 87(2)(b) in Queens.

Allegation B – Abuse of Authority: Police Officer Joseph Nicastro used physical force against § 87(2)(b)

This case was discussed with a CCRB attorney.

It is undisputed that officers from the 115th Precinct, including PO Nicastro, entered § 87(2)(b) in Queens. Events #§ 87(2)(b) confirmed that an individual called for EMS to the location for an aided female who was not taking her medication for six months and had a mental history. The job went over as a 10-54E1, for an emotionally disturbed individual later identified as § 87(2)(b) (BR01). PO Nicastro and PO Vargas were the first officers to respond to the location. Additional 115th Precinct officers and FDNY EMS responded to the location sometime later.

§ 87(2)(b) stated that she heard knocking on her bedroom door (BR02). § 87(2)(b) bedroom was located on the § 87(2)(b). § 87(2)(b) opened the door and saw several officers, including a white male, 5’5” tall, standing outside. PO Nicastro, a white male, 5’6” tall, spoke with § 87(2)(b) regarding whether she had electricity in her room. PO Nicastro then entered her room and pushed her onto the bed. The other officers surrounded § 87(2)(b) and prevented her from leaving. Given § 87(2)(b) testimony that PO Nicastro was the officer who first entered her apartment and that he matched the subject officer description, an entry allegation was pleaded against him.

EMT § 87(2)(b) testified that she and her partner were called to the location to respond to an emotionally disturbed person (BR03). She was aware that the building housed individuals with psychiatric issues. EMT § 87(2)(b) spoke with a staff member who informed her that § 87(2)(b) had an unknown psychiatric issue and was not taking her medication. While inside of § 87(2)(b) room, EMT § 87(2)(b) did not observe an officer push § 87(2)(b) onto her bed.

PO Nicastro stated that a social worker for the building, identified as § 87(2)(b), opened the building door and permitted him and PO Vargas to enter (BR04). § 87(2)(b) informed the officers that he called 911 to report that § 87(2)(b) was schizophrenic and was not taking her medication. PO Nicastro walked towards § 87(2)(b) bedroom and saw that the door was wide open. He stood in the threshold of the door while speaking to § 87(2)(b) who appeared to be packing to leave. PO Nicastro informed § 87(2)(b) that an ambulance would be arriving and once EMS determined that she was fine she would be free to leave. § 87(2)(b) became irate and yelled at PO Nicastro. She then pushed PO Nicastro on his chest while stating “you need to get out of my way.” PO Nicastro reiterated that § 87(2)(b) could not leave without first speaking with EMS before warning her that if she pushed him again he would have to restrain her in handcuffs. § 87(2)(b) extended her arms out in an attempt to push PO Nicastro a second time. PO Nicastro pushed § 87(2)(b) hands down. He then entered the room followed by PO Vargas. Both officers grabbed § 87(2)(b) arms and placed her in handcuffs.

PO Vargas stated that after speaking with § 87(2)(b) regarding § 87(2)(b) mental history, he walked over to § 87(2)(b) bedroom, knocked on the door which was wide open, and saw § 87(2)(b) sitting on a bed (BR05). PO Vargas and PO Nicastro entered the room and asked § 87(2)(b) if she was supposed take any medication. PO Vargas then exited the room to speak with § 87(2)(b) while PO Nicastro remained with § 87(2)(b). § 87(2)(b) informed him that § 87(2)(b) suffered from schizophrenia, had not been taking her medication, and threatened her roommates and the building staff. PO Vargas returned to the room and informed § 87(2)(b) that she needed to speak to EMS who were on their way. Sometime later, § 87(2)(b) who was still sitting on her bed, stood up and attempted to leave the room by pushing PO Nicastro on the chest. PO Nicastro pushed § 87(2)(b) arms down and she sat on the bed briefly before standing up and pushing PO Nicastro a second time on the chest. PO Nicastro grabbed § 87(2)(b) arms and placed her in handcuffs.

PO Liebe stated that he arrived after PO Nicastro and PO Vargas were inside of § 87(2)(b) room and was not informed as to how the officers gained entry (BR06). He did not observe PO Nicastro push § 87(2)(b) onto the bed and she did not complain of this.

PO Rene stated that when he arrived on scene PO Nicastro stood in the threshold of the doorway while PO Vargas stood behind him (BR07). PO Rene did not observe PO Nicastro push § 87(2)(b) onto her bed and she did not complain of this.

The emergency exception to the warrant requirement states that officers may enter a protected space when they have reasonable grounds to believe an emergency is at hand and there is an immediate need for their assistance to protect life or property, their entry is not primarily motivated by the intent to arrest and seize evidence, and there is a reasonable basis to associate the emergency with the area or place to be searched. The emergency exception has been applied when a witness informs the police that a suicidal person is present at a location, People v. Ormanian, 55 Misc. 3d 566 (2016) (BR08).

The investigation determined that officers, including PO Nicastro, arrived to and entered § 87(2)(b) room in response to a request by a staff member to assist in dealing with § 87(2)(b) a person determined by FDNY later on to be emotionally disturbed. EMT § 87(2)(b) PO Nicastro, and PO Vargas were consistent that § 87(2)(b) informed them of § 87(2)(b) mental history and refusal to take her medication. In addition, PO Vargas stated that § 87(2)(b) informed him that § 87(2)(b) was making threats against staff and her roommates. § 87(2)(g)

§ 87(2)(g)

Allegation C – Abuse of Authority: Officers forcibly removed § 87(2)(b) to the hospital.

§ 87(2)(b) stated that the officers told her that she needed to go to the hospital and prevented her from leaving the room (BR02). PO Nicastro stated that an ambulance was called to the location. Sometime later, § 87(2)(b) was placed into an ambulance.

EMT § 87(2)(b) entered § 87(2)(b) bedroom, after speaking with a building staff member regarding § 87(2)(b) unknown psychiatric issue, and immediately recognized the odor of feces and urine coming from the room (BR03). EMT § 87(2)(b) attempted to speak to § 87(2)(b) who was uncooperative and refused to answer questions for a proper assessment. EMS determined that § 87(2)(b) needed to go to the hospital given that she showed signs of an unknown psychiatric issue, her refusal to cooperate with EMS, and the horrid odor coming from her room.

PO Nicastro stated that § 87(2)(b) was brought outside to speak to EMS who determined that since she was not taking her medication for schizophrenia she needed to go to the hospital (BR04). He did not recall if EMS spoke with § 87(2)(b) in her room. PO Liebe and PO Rene then escorted EMS and § 87(2)(b) to § 87(2)(b) where she was admitted in the psychiatric unit.

PO Vargas stated that he spoke with EMS in the kitchen and relayed the information § 87(2)(b) provided regarding § 87(2)(b) (BR05). EMS entered § 87(2)(b) room and she refused to cooperate with their assessment. EMS informed the officers that § 87(2)(b) needed to go to the hospital to be checked out by a doctor. Officers then informed § 87(2)(b) that she would be taken to the hospital.

PO Liebe stated that EMS spoke with § 87(2)(b) for approximately five minutes before determining that she needed to go to the hospital (BR06). PO Liebe then informed § 87(2)(b) that she would be taken to the hospital.

PO Rene stated that he did not recall if EMS spoke with § 87(2)(b) (BR07). However, EMS made the final determination that § 87(2)(b) needed to go to the hospital. He added that there was an unpleasant odor coming from within § 87(2)(b) room. PO Rene then informed § 87(2)(b) that she would be taken to the hospital.

Aided Report § 87(2)(b) noted that § 87(2)(b) was off her medication and suffered from schizophrenia. She became combative and tried to leave the location while making threats to officers. § 87(2)(b) would not voluntarily go to the hospital and was restrained in handcuffs to keep her from harming herself and others (BR09).

Ambulance Care Report § 87(2)(b) noted that § 87(2)(b) room smelled like urine. § 87(2)(b) was violent, uncooperative and yelled and cursed at EMS and officers. Staff informed EMS that § 87(2)(b) was schizophrenic, had not been taking her medication since August 2017, and was yelling at her roommates. § 87(2)(b) was handcuffed given her unpredictable behavior. § 87(2)(b) also yelled at the hospital emergency room staff (Privileged Document 01).

An emotionally disturbed person (EDP) is someone who appears to be mentally ill or temporarily deranged and is conducting himself in a manner which a police officer reasonably

believes is likely to result in serious injury to himself or others. If an EDP is unarmed, not violent and is willing to leave voluntarily, the EDP may be taken into custody without the specific direction of a supervisor. Patrol Guide Procedure 221-13 (BR10).

The investigation determined that officers followed proper police guidelines by assisting in the removal of § 87(2)(b) to the hospital. EMT § 87(2)(b) PO Nicastro, PO Vargas, PO Liebe, and PO Rene were all consistent that EMS made the final determination that § 87(2)(b) needed to go to the hospital. All officers on scene, acting on the decision made by EMS, informed § 87(2)(b) that she needed to go to the hospital and assisted in the transport to the hospital.

§ 87(2)(g)

Allegation D – Abuse of Authority: Police Officer Joseph Nicastro refused to provide his name to § 87(2)(b)

Allegation E – Abuse of Authority: Police Officer Jason Vargas refused to provide his name to § 87(2)(b)

Allegation F – Abuse of Authority: Police Officer Kurt Liebe refused to provide his name to § 87(2)(b)

Allegation G – Abuse of Authority: Police Officer Fouger Rene refused to provide his name to § 87(2)(b)

§ 87(2)(b) stated that at some point during the incident she requested that all officers on scene provide their names to her (BR02). However, none of the officers provided their names to her. § 87(2)(b) was unable to specify at what point throughout the incident this occurred or where she was located when she made this request.

EMT § 87(2)(b) did not recall if § 87(2)(b) asked any of the four officers on scene to provide their names to her (BR03).

PO Nicastro stated that § 87(2)(b) did not ask any of the officers to provide their names and he denied refusing to provide his information to her (BR04).

PO Vargas stated that while in her room, § 87(2)(b) asked PO Nicastro for his name and he provided both his name and shield number. While in the ambulance, § 87(2)(b) requested PO Vargas for his name and he provided her with both his name and shield number (BR05).

PO Liebe and PO Rene were consistent that they did not recall § 87(2)(b) asking any of the officers on scene to provide their names and they both denied refusing to provide their information to her (BR06-07).

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR11).
- PO Nicastro has been a member-of-service for two years and this is the first CCRB complaint to which he has been a subject.

- PO Vargas has been a member-of-service for one year and this is the first CCRB complaint to which he has been a subject.
- PO Liebe has been a member-of-service for two years and has been a subject in one CCRB complaint which was closed as mediated.
- PO Rene has been a member-of-service for two years and this is the first CCRB complaint to which he has been a subject.

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- A FOIL request was submitted with the New York City Office of the Comptroller for a Notice of Claim and will be added to the case file upon receipt.
- § 87(2)(b), § 87(2)(c) (impair contract awards or CBAs)

Squad No.: 6

Investigator: _____ Investigator Diana Vale _____
Signature Print Title & Name Date

Squad Leader: _____ Investigative Manager Jessica Peña _____
Signature Print Title & Name Date

Reviewer: _____

Signature _____ Print Title & Name _____ Date _____